

AIR TRANSPORT SERVICES

*Exchange of notes at Washington May 6 and 8 and July 21, 1947,
supplementing agreement of December 27, 1946*

Entered into force July 21, 1947

*Exchange of notes concerning 30 percent ownership clause canceled
May 26, 1950*

61 Stat. 2607; Treaties and Other
International Acts Series 1587

The Peruvian Ambassador to the Secretary of State

PERUVIAN EMBASSY
WASHINGTON, D.C.

M/109

May 6, 1947

YOUR EXCELLENCY:

I refer to the text of the notes of the Minister of Foreign Affairs of Peru and the Ambassador from the United States which were exchanged on December 27, 1946¹ and effected at the time of the conclusion of the bilateral Transport Agreement between the United States and Peru. This text was made public on April 29, 1947 by the State Department. As a consequence of this publication, the oral agreement on the application of the Peruvian International Airways for a permit to enter the United States was postponed until May 9, 1947.

I have been instructed by my Government to direct your attention to the English translation of the Foreign Office note of December 27, 1946 which had reference to participation by United States and Canadian capital in an airline to be designated by the Government of Peru (in this case the Peruvian International Airways) to enjoy the rights granted by the United States to a Peruvian airline.

In order that there may be no possible misinterpretation as to the mutual understanding, my Government desires to invite your attention to the following matters:

(1) The English word "held" employed in the translation of each of the three conditions does not have the meaning of the Spanish words "en manos de". A more accurate redaction would be the literal translation of the words, namely "in the hands of".

¹ TIAS 1587, *ante*, p. 1229.

(2) It will be recalled that in the discussions held before the exchange of the above mentioned notes with respect to the third condition, it was the agreement that the balance of the capital of the Company which was not in the hands of Peruvian nationals should be in the hands of nationals of the United States and of Canada; and that the relative participation in this balance by the nationals of these two countries should not exceed a limit of 40% for one and 60% for the other, either way, based on the total non-Peruvian capital. This would permit a maximum discrepancy of 50% in the relative participations of the national groups of the United States and Canada, as compared to each other, but at the same time achieves the intended effect of preventing either of these national groups from acquiring more than 42% of the total capital. I would like to call to your attention that the note just published states that "among the respective groups of nationals of each of those two countries (United States and Canada), there shall not at any time exist a difference of more than 20% in the amount of their respective shares in the capital of the Company." The effect of the wording of this note would be that, assuming 30% of the capital were in the hands of Peruvian nationals, the relative participations in the balance by nationals of the United States and Canada could not exceed a limit of 45.5 for one and 54.5 for the other, either way, if the percentage were computed upon the relative holdings of Americans and Canadians rather than on the total non-Peruvian capital. The Minister of Foreign Affairs believes that you will agree that this was not the intention of both the United States and the Peruvian Governments when the Agreement was drawn up. Therefore, with the provision that this is agreeable to you, I suggest that the third paragraph be expressed as follows: "Of the remaining total participation by Americans and Canadians, no more than 60% shall be in the hands of nationals of either country." Furthermore, my Government believes that the use of the word "shares" is subject to misinterpretation. As used in the translation, this could be interpreted to mean "shares of stock". The Spanish word for shares of stock is "acciones". The word used in the Peruvian note of December 27th is "participaciones" and it should be translated as "participation in the capital of the Company."

I will appreciate very much receiving your confirmation of this interpretation of our mutual understanding at the time of the conclusion of the bilateral Air Transport Agreement.

Please accept, Your Excellency, the renewed assurances of my highest consideration.

JORGE PRADO

His Excellency
General GEORGE MARSHALL
Secretary of State
Washington, D.C.

The Secretary of State to the Peruvian Ambassador

DEPARTMENT OF STATE

WASHINGTON

May 8 1947

EXCELLENCY:

I have the honor to acknowledge the receipt of your note No. M/109 of May 6, 1947, concerning the construction of the note of December 27, 1946, No. (D) 6Y/5 delivered to the Ambassador of the United States of America in Lima on that date by His Excellency the Minister for Foreign Affairs of the Republic of Peru, the terms of which latter note were accepted by note No. 306 dated December 27, 1946 from the Ambassador of the United States of America to His Excellency the Minister for Foreign Affairs of the Republic of Peru.

In paragraph (1) of your note you refer to the translation of the Spanish words "en manos de" by the English word "held," and suggest that a more accurate translation would be "in the hands of." The intent of the two notes exchanged in Lima, to which reference is made above, was to establish a standard of true, actual ownership of the shares of the Peruvian airline concerned. I believe that there is no doubt that such was the intention of all parties concerned. I therefore believe that whether the word "held" or the words "in the hands of" are used to translate the phrase "en manos de" is not a matter of substance, but would accept your phraseology, provided that the intention to establish a standard based on factual ownership is understood. It would be appreciated if Your Excellency would confirm this interpretation of the matter.

I accept the understandings expressed by Your Excellency in paragraph (2) of your note as representing a more precise expression of the intention of our respective Governments than evidenced by the exchange of notes in Lima above referred to.

If Your Excellency will inform me that these understandings are acceptable to your Government, I would suggest that your note of May 6, this note, and your reply thereto be deemed to constitute the controlling expression of understanding between our Governments concerning these matters.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:

WILLARD L. THORP

His Excellency,
SEÑOR DON JORGE PRADO,
Ambassador of Peru.

*The Peruvian Ambassador to the Secretary of State*PERUVIAN EMBASSY
WASHINGTON, D.C.

No. 5-3-M/160

July 21, 1947

YOUR EXCELLENCY:

I have the honor to refer to the notes exchanged between the Department of State and this Embassy in relation to the interpretation of certain terms of the Bilateral Transport Agreement signed by the United States and Peru. I also refer particularly to the note of the Department of May 8, 1947.

In reply, I am pleased to inform Your Excellency, following instructions from my Government, that since the Department in its above-mentioned note of May 8th agrees with my Government's translation of the Spanish words "en manos de" as "in the hands of", it may be understood that it was the intention of the parties in the exchange-of-notes to establish a standard based on factual ownership of the shares of stock in the hands of nationals of Peru, the United States and Canada.

Since my Government agrees with the Government of the United States in this interpretation, I have the honor to inform Your Excellency that the notes on this matter may be considered as the agreement of both Governments.

Please accept, Your Excellency, the renewed assurances of my highest consideration.

JORGE PRADO

His Excellency

General GEORGE MARSHALL

*Secretary of State**Department of State**Washington, D.C.*